

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

CIVIL ACTION NO. 7:21-CV-00017-D

LAMARR ANDRE MCDOW,

Plaintiff,

v.

FONTELLA MARIE HOLMES,

Defendant.

**DEFENDANT FONTELLA MARIE  
HOLMES' MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT PURSUANT  
TO FED. R. CIV. P. 8(a) & 12(b)(1), (2), (4),  
(5), AND (6)**

Defendant Fontella Marie Holmes (“Defendant”), by and through undersigned counsel, hereby moves, pursuant to Rules 8(a) and 12(b)(1), (2), (4) (5), and (6) of the Federal Rules of Civil Procedure, to dismiss the Complaint, and the claims therein, of Plaintiff Lamarr Andre McDow for failure to provide a short and plain statement of the claims showing that Plaintiff is entitled to relief, lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient process, insufficient service of process, and failure to state a claim upon which relief can be granted. Plaintiff’s process is defective, and Plaintiff has failed to properly serve Defendant with service of process, as a result of which there is no personal jurisdiction over Defendant. Further, Plaintiff’s claims fail as a matter of law to state claims upon which relief can be granted. In addition, because Plaintiff provides no facts demonstrating actual injury or harm, Plaintiff lacks standing, and the Court lacks subject matter jurisdiction. The facts and arguments in support of this Motion are set forth in Defendant’s Memorandum in Support of this Motion to Dismiss filed contemporaneously herewith.

WHEREFORE, Defendant respectfully moves, prays, and requests that the Plaintiff's Complaint, and the claims therein, be dismissed with prejudice pursuant to Rules 8(a) and 12(b)(1), (2), (4), (5), and (6) of the Federal Rules of Civil Procedure for failure to provide a short and plain statement of the claims showing that Plaintiff is entitled to relief, lack of subject matter jurisdiction, personal jurisdiction, insufficient process, insufficient service of process, and failure to state a claim upon which relief can be granted. Defendant further moves, prays, and requests that the Court grant any and all such other relief as the Court deems just and appropriate.

This the 11th of February, 2021.

**K&L GATES LLP**

/s/ A. Lee Hogewood III

A. Lee Hogewood III  
North Carolina State Bar No. 17451  
Matthew T. Houston  
North Carolina State Bar No. 46130  
Zachary S. Buckheit  
North Carolina State Bar No. 55123  
K&L Gates LLP  
4350 Lassiter at North Hills Ave., Suite 300  
Post Office Box 17047 (27619-7047)  
Raleigh, North Carolina 27609  
Telephone: (919) 743-7322  
Facsimile: (919) 516-2122  
E-mail: lee.hogewood@klgates.com  
matthew.houston@klgates.com  
zach.buckheit@klgates.com  
*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed electronically in accordance with the local rules and was therefore served electronically on those entities that have properly registered for such electronic service and was further served by depositing a copy in a depository of the United States Postal Service, first-class, postage prepaid, addressed as shown below:

Ira Braswell IV  
Braswell Law, PLLC  
P.O. Box 703  
Louisburg, NC 27549  
*Attorney for Plaintiff*

This the 11th day of February, 2021.

**K&L GATES LLP**

/s/ A. Lee Hogewood III  
A. Lee Hogewood III  
North Carolina State Bar No. 17451  
Matthew T. Houston  
North Carolina State Bar No. 46130  
Zachary S. Buckheit  
North Carolina State Bar No. 55123  
K&L Gates LLP  
4350 Lassiter at North Hills Ave., Suite 300  
Post Office Box 17047 (27619-7047)  
Raleigh, North Carolina 27609  
Telephone: (919) 743-7322  
Facsimile: (919) 516-2122  
E-mail: lee.hogewood@klgates.com  
matthew.houston@klgates.com  
zach.buckheit@klgates.com  
*Counsel for Defendant*